

MINUTES
CIVIL INSTRUCTIONS COMMITTEE RETREAT
October 18-19, 2001

The Civil Instructions Committee met on Thursday, October 18th and Friday, October 19th in Indianapolis for a two day retreat.

Members present. Judge Gregory Horn, chair (Thursday only); Judge Roger Bradford, Judge David Ault (Thursday only), Judge Jeffery Dywan, Judge Donald Hendrickson, Judge David Matsey, Judge Lynn Murray (Friday only) and Judge John Pera.

Staff Present. Vicki Davis provided staff assistance during the retreat.

2001 Manuscript for the Pattern Jury Instructions. A manuscript for the Second Edition Revised pattern jury instructions was sent to Mathew Bender Publishing (a division of Lexis Publishing) late July. Ms. Davis reported she expects to start reviewing the first run manuscript proof later in the month and that she expected it to go to press sometime in November for sale in December.

2002 Manuscript for a Supplement. Ms. Davis reported Lexis Publishing anticipates requesting a manuscript for a supplement to the civil pattern instructions every year in an effort to keep the publication current. The next manuscript is due August 30, 2002. It will contain all revised and new instructions approved for publication as of the June 2002 retreat, all commentary revisions, and canned on-line legal research strings as added by the publisher.

Dates for 2002 Committee Retreats. The committee scheduled three committee retreats for 2002. All retreats will be held at the offices of the Indiana Judicial Center. Ms. Davis stated she would check with the Judges Association about funding hotel overnight and mileage for the third retreat. The committee has a retreat scheduled on: March 13 - 14, 2002; June 6 - 7, 2002; and October 17 - 18, 2002.

Format Changes to the Pattern Instructions. The committee adopted an additional format change to the pattern set deciding that instruction text should be line numbered. Ms. Davis was asked to check with the editor to determine whether this additional format enhancement could be incorporated into the Second Edition B Revised publication.

Chapter 7 B Product Liability. The committee continued to review and revise the product liability instructions in Chapter 7. The following actions were taken. Copies of instructions attached.

1. Instruction No. 7.01(A) AUser or Consumer B Definition@ was adopted for publication. Ms. Davis requested to note in the commentary the pre-1995 statutory language. Instruction No. 7.01(B) APhysical Harm B Definition@ was adopted for publication. Ms. Davis requested to include in the commentary a notation that physical harm/damage to the product itself is not covered under the product liability statute and to expand commentary to include any cases discussing Asudden major damage@ and Aevolving damage.@"
2. Instruction No. 7.01(C) ASellerB Definition@ was adopted for publication.
3. Instruction No. 7.01(D) AProduct B Definition@ was adopted for publication. Ms. Davis was asked to research whether there is any case law defining Aconveyed@ and to include it in the commentary. Commentary will be expanded to include cases commenting on the sale of a Aservice@ versus a Aproduct@ or Agood.@" The committee was of the opinion the term Aconveyed@ in the statute should be construed as meaning ASold,@ Aleased,@ or Aotherwise put into the stream of commerce.@"
4. Instruction No. 7.01(E) AUnreasonably Dangerous B Definition@ was adopted for publication as modified at the meeting. Ms. Davis requested to expand the commentary to include a discussion of the cases on Aunreasonably dangerous.@"
5. Instruction No. 7.01(F) AManufacturer B Definition@ was adopted for publication.
6. Instruction No. 7.01(G) ASeller as Manufacturer B Definition@ was adopted for publication as modified at the meeting. The commentary will be expanded to include a statement that if this instruction is given the user should consider the applicability of Instruction No. 7.01(F). The commentary will also cite the pre-1995 statutory language.
7. Instruction No. 7.02(A) ADefective ProductsB Defective Condition@ was adopted for publication.
8. Instruction No. 7.02(B) ADefective ProductsBWarnings@ was adopted for publication.
9. Instruction No. 7.02(C) AProduct Safe for Reasonably Expected Handling/Product Incapable of Being Made Safe B Not Defective@ was adopted for publication.
10. An elements instruction for a products case was added to the pattern set as Instruction No. 7.03 AProduct Liability Against Manufacturer B Elements Instruction (Actions Arising on or After 7/1/95) B Elements B Burden of Proof.@" It was adopted for publication. The commentary will include a note that an elements instruction can be easily crafted using the pre-1995 statutory language following the format of this pattern.
11. Instruction No. 7.04 AReasonable Care/Lack of Privity Not a Defense@ was adopted for publication as modified during the meeting.

12. An instruction on misuse of product was drafted (Instruction No. 7.05(A). Defense B Misuse of Product) and adopted for publication. The commentary will cite to the applicable statutory provisions and indicate the instruction should be tailored to fit the specific facts of the case.
13. An instruction on known defect and danger as a defense was drafted (Instruction No. 7.05(B) ADefense B Known Defect and Danger@) and adopted for publication. The commentary will cite to Ind. Code 34-20-6-3 and 34-20-8-1 on comparative fault analysis in a product liability case.
14. The committee drafted an instruction on the defense of modification/alteration of the product (Instruction No. 7.05(C) ADefense B Modification/Alteration of Product@); it was adopted for publication. Commentary was drafted for the pattern discussing the use of the phrase Aa proximate cause@ as opposed to the statutory language of Athe proximate cause.@
15. The committee drafted an instruction on products in conformity with state of the art/codes/standards (Instruction No. 7.05(D) AProducts in Conformity with State of the Art or in Compliance with Federal/State Codes, Standards, Regulations or Specifications@). It was not adopted for publication; rather, the instruction will be reviewed at the March 2002 retreat. Ms. Davis was asked to include the statutory language in the commentary.
16. The instruction on breach of warranty claim (No. 7.11 ABreach of Warranty B Elements Instruction@) and comments were revised and adopted for publication as revised. Ms. Davis was asked to check for and add recent case law to the commentary.
17. Instruction No. 7.12 AExpress Warranties by Affirmation, Promise, Description or Sample@ was revised; it was adopted for publication as revised.
18. Instruction No. 7.13 ABuyer and Seller B Definitions B Warranty Claims@ and commentary were revised and adopted for publication as revised.
19. Instruction No. 7.14 AWarranty not Created by Mere Opinion or Commendation@ was revised and adopted for publication as revised. Ms. Davis requested to add recent case law to the commentary.
20. Instruction No. 7.15 AImplied Warranty of Merchantability@ was revised and adopted for publication as revised.
21. Instruction No. 7.16 AMerchant B Definition@ was revised and adopted for publication as revised.
22. Instruction No. 7.17 ADefinition of Merchantable Goods@ was revised and adopted for publication as revised.
23. Instruction No. 7.18 AFungible Goods and Securities B Definition@ was revised and adopted for publication as revised.

Next Committee Retreat. The next retreat for the Civil Instructions Committee is scheduled for Thursday, March 13, 2002 and Friday, March 14, 2002. The retreat will be held at the offices of the Indiana Judicial Center. Items on the agenda include: continue to review and revise Chapter 7 Product Liability Instructions B No. 7.05 (D) and Nos. 7.20 through 7.41; review and revise Chapter 5 B Negligence/Contributory Negligence Instructions.; and review and revise Chapter 6 B Comparative Fault Instructions.

Respectfully submitted,

Vicki Davis
Staff Assistant

Enclosures